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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,670	11/07/2001	Sandra M. Tsontzidis	11227.00	1221

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INTELLECTUAL PROPERTY DEPARTMENT
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DENVER, CO 80202-5647

EXAMINER

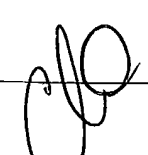
LEUNG, PHILIP H

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/008,670	Applicant(s) TSONTZIDIS ET AL.	
	Examiner Philip H Leung	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 and 89-103 is/are pending in the application.
- 4a) Of the above claim(s) 26-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 and 89-103 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 7-23 and 89-103 are rejected under 35 U.S.C. 102(b) as being anticipated by Young (US 5,585,027) (newly cited).

Young shows a microwave packaging material 12 comprising; a substrate (stock material 18); a microwave interactive material layer 16 supported upon the substrate 18, wherein the microwave interactive material layer and the substrate together form a laminate material 12 (see Figure 2 and col. 3, line 65 – col. 4, line 59); and an indentation pattern (see Figures 4-7, 13, 14, 17 and 19, col. 6, lines 16-56 and col. 8, lines 1- 62) formed in only one side of the laminate material, wherein the indentation pattern substantially maintains the integrity of the microwave interactive layer (claims 2 and 90) and wherein the laminate material maintains intermediate, flat, coplanar surfaces between portions of the indentation pattern (claims 3 and 91). In regard to claims 1 and 89, it shows in Figure 15 a plurality of creases 142 which is functionally the same as the claimed “a scored impression”. The creases 142 allow the tray 140 to be folded to form raised portions enabling moisture movement (see col. 8, lines 20-36). Although it uses the terms embossed or creased, it is submitted that the pattern is the same as “indentation pattern” as claimed when the packaging material is viewed from the bottom side. It is submitted that during patent examination, claims are given their broadest reasonable interpretation consistent with the

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specification. It is proper to use the specification to interpret what the applicant meant by a word or phrase recited in the claim. However, it is **not** proper to read limitations appearing in the specification into the claim when these limitations are not recited in the claim. See *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994); *Intervet America Inc. v. Kee-Vet Lab. Inc.*, 887 F.2d 1050, 1053, 12 USPQ2d 1474, 1476 (Fed. Cir. 1989) (M.P.E.P. 2111). The various patterns shown in Figures 4-8, 13, 14 and 17 and 19 inherently include convex and concave channels for the claimed function of allowing movement of moisture and forming air gap for insulating effects as claimed (see col. 6, lines 15-36).

3. Claims 1-4, 7, 8, 10-23 and 89-103 are further rejected under 35 U.S.C. 102(b) as being anticipated by Swiontek (US 4,794,005) (newly cited).

The broadly claimed structure is met by Swiontek. More particularly, it shows a microwave packaging material (tray 5, 5') comprising: a substrate; a microwave interactive material layer supported upon the substrate (see col. 3, lines 29-36 and col. 5, lines 4-7), wherein the microwave interactive material layer and the substrate together form a laminate material; and an indentation pattern formed in the nature of a scored impression in the laminate material (a plurality of scored lines 21) wherein the scored impression substantially maintains the integrity of the microwave interactive layer (claims 1 and 89); formed in only one side of the substrate (claims 2 and 90) and wherein the laminate material maintains intermediate, flat, coplanar surfaces between portions of the indentation pattern (claims 3 and 91) (see Figures 1-8 and col. 5, lines 8-15). The various patterns shown in these figures inherently include convex and

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concave channels for the claimed function of allowing movement of moisture and forming air gap for insulating effects as claimed (see col. 4, line 4 – col. 5, line 40).

4. Claims 90 and 91 are further rejected under 35 U.S.C. 102(b) as being anticipated by Palacios (US 5,026,958) (newly cited).

The broadly recited claimed structure is met by Palacios. More particularly, it shows a microwave packaging material (container) comprising a substrate (the paperboard or plastic material forming the container); and an indentation pattern (the crease pattern 44) formed in only one side of the substrate. In regard to claim 91, the substrate maintains intermediate, flat, coplanar surfaces between portions of the indentation pattern as shown in Figures 2, 3 and 9. Furthermore, the broad term “indentation pattern” reads on the plurality pockets 67 as shown in Figure 10 and the surface 65 is the claimed coplanar surface between the portions of the indentation pattern.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 5, 6, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young (US 5,585,027), in view of Zeng et al (US 6,204,492) or Lai et al (US 5,698,127) (both previously cited).

As set forth above, Young shows every feature and function as claimed except for the use of a microwave reflective, shielding layer in the microwave interactive layer that is aluminum which is also a well known microwave shielding material. Anyway, Zeng shows an abuse-tolerant microwave food packaging material includes repeated sets of metallic foil or high optical density evaporated material segments (22) disposed on a substrate (34). Each set of metallic segments (22, 30, 40, 44, 62, 64, 66 etc.) is arranged to define a perimeter (such as 24, 32, 68) having a length equal to a predetermined ratio of the operating, or effective wavelength of a microwave oven. The repeated sets of segments act both as a shield to microwave energy and as focusing elements for microwave energy when used in conjunction with food products yet remaining electrically safe in the absence of the food products (see Figures 1-6 and col. 2, lines 25-63). Similarly, Lai shows a microwave food package material having similar claimed features as shown in Figures 2-8 and col. 4, line 15 - col. 6, line 65. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Young to also include reflective shielding material to form an abuse-tolerant metallic pattern as the microwave interactive layer for better cooking result, in view of the teaching of Zeng or Lai. The various indentation patterns would have been engineering variations of the patterns shown in Young (see Figures 8, 17 and 19).

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7. Claims 5, 6, 9, 24 and 25 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Swiontek (US 5,350,904), in view of Zeng et al (US 6,204,492) or Lai et al (US 5,698,127).

As set forth above, Swiontek shows every feature and function as claimed except for the use of a microwave reflective, shielding layer in the microwave interactive layer that is aluminum which is also a well known microwave shielding material. Anyway, Zeng shows an abuse-tolerant microwave food packaging material includes repeated sets of metallic foil or high optical density evaporated material segments (22) disposed on a substrate (34). Each set of metallic segments (22, 30, 40, 44, 62, 64, 66 etc.) is arranged to define a perimeter (such as 24, 32, 68) having a length equal to a predetermined ratio of the operating, or effective wavelength of a microwave oven. The repeated sets of segments act both as a shield to microwave energy and as focusing elements for microwave energy when used in conjunction with food products yet remaining electrically safe in the absence of the food products (see Figures 1-6 and col. 2, lines 25-63). Similarly, Lai shows a microwave food package material having similar claimed features as shown in Figures 2-8 and col. 4, line 15 - col. 6, line 65. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Swiontek to also include reflective shielding material to form an abuse-tolerant metallic pattern as the microwave interactive layer for better cooking result, in view of the teaching of Zeng or Lai. In regard to claim 9, the use of plastic and/or paper as microwave packaging materials is well known in the art. The various indentation patterns would have been engineering variations of the patterns shown in these references.

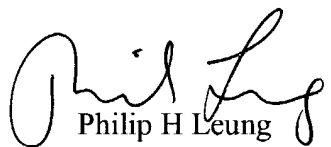
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8. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection. To reiterate, the claimed "indentation pattern" does not include any structural differences between any microwave packaging material including "fold lines" or "raised portions". As pointed out above, during patent examination, this term must be given their broadest reasonable interpretation consistent with the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip H Leung whose telephone number is (703) 308-1710.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on (703) 305-5766. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Philip H Leung
Primary Examiner
Art Unit 3742

P.Leung/pl
8-06-2004